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28 UNITED STATES DISTRICT COURT

1 NORTHERN DISTRICT OF CALIFORNIA

2 In re CNET NETWORKS, INC. ) Master File No. C-06-03817-WHA  
3 SHAREHOLDER DERIVATIVE )  
4 LITIGATION )  
5 \_\_\_\_\_ ) PLAINTIFFS' NOTICE OF MOTION AND  
6 This Document Relates To: ) MOTION TO STAY PROCEEDINGS  
7 ) PENDING COMPLETION OF BOOKS AND  
8 ALL ACTIONS. ) RECORDS INSPECTION  
9 \_\_\_\_\_ ) DATE: To be determined  
10 ) TIME: To be determined  
11 ) CTRM: 9, The Honorable William Alsup  
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1 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

2 PLEASE TAKE NOTICE that as soon as this matter may be heard before the Honorable  
3 William Alsup, plaintiffs will, and hereby do, move for an order staying proceedings in this action to  
4 allow plaintiffs time to complete a books and records (a/k/a inspection demand) examination of  
5 CNET Networks, Inc. ('CNET'). Plaintiffs make this Motion at the invitation of the Court pursuant to  
6 its April 30, 2007 Order allowing Leave to Amend and Denying Motion for Reconsideration ("April  
7 30 Order"). Specifically, plaintiffs seek a period of 35 days following CNET's provision of full access  
8 to the requested books and records in which to prepare and file an amended complaint. As detailed  
9 in the accompanying memorandum, plaintiffs cannot predict CNET's reaction to any such inspection  
10 demand, and it is possible that plaintiffs will need to enforce the inspection demand. Accordingly,  
11 the stay plaintiffs seek includes the time period necessary to enforce the inspection demand.

12 This Motion is based on this Notice of Motion and Motion, and the following memorandum  
13 of points and authorities.

14 **I. INTRODUCTION**

15 Pursuant to this Court's April 30 Order plaintiffs respectfully move to stay this litigation  
16 pending an opportunity to inspect CNET's books and records. The inspection of such books and  
17 records is necessary to answer a pivotal question raised by this Court as to whether options granting  
18 authority, pursuant to CNET's stock option plans, was delegated from CNET's Board or  
19 Compensation Committee to management. As the Court is aware from plaintiffs' prior briefing on  
20 this issue, the question of demand futility is to be resolved in plaintiffs' favor regardless of the  
21 outcome of the delegation issue, given that the delegation would be an *ultra vires* act. *See Sanders v.*  
22 *Wang*, No. 16640, 1999 Del. Ch. LEXIS 203, at \*3, \*14 (Del. Ch. Nov. 8, 1999). However, in the  
23 interest of resolving the pleadings on an accurate record, a brief stay of this action is appropriate to  
24 permit plaintiffs to obtain records to which they are already entitled by statutory law. Plaintiffs seek  
25 stock option and compensation committee documents concerning the delegation of options granting  
26 authority pursuant to the plans, and documents concerning CNET's special committee investigation  
27 and report that bear on the question of delegation.

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1 **II. RELEVANT PROCEDURAL AND FACTUAL BACKGROUND**

2 Plaintiffs previously served a demand to inspect CNET's books and records, but were  
 3 improperly refused that initial request. The Court has invited plaintiffs to bring a motion to stay the  
 4 instant action pending completion of plaintiffs' inspection of CNET's books and records. *See* April 30  
 5 Order. That aspect of the Order was based on CNET's representation that documents are indeed  
 6 available for production in response to such an inspection demand.

7 In its April 30 Order, the Court "noticed the rule in Delaware allowing a shareholder to seek  
 8 information from the corporation in the form of a books-and-records inspection," and stated that "[i]f  
 9 plaintiffs wish to pursue this form of 'discovery' . . . the Court would consider a stay of the instant  
 10 action and postponement of the re-pleading timetable pending expeditious completion of those  
 11 proceedings." *Id.* at 2-3. By this Motion, plaintiffs seek a stay to allow time to pursue an inspection  
 12 demand.

13 **III. A STAY IS WARRANTED PENDING PLAINTIFFS' INSPECTION**

14 A federal district court has broad discretion to stay proceedings as an incident to its power to  
 15 control its own docket. *Clinton v. Jones*, 520 U.S. 681, 707 (1997) (citing *Landis v. N. Am. Co.*, 299  
 16 U.S. 248, 254 (1936)). *See also Mediterranean Enters. v. Ssangyong Corp.*, 708 F.2d 1458, 1465  
 17 (9th Cir. 1983) (affirming order staying the action, and stating "[t]he trial court possesses the inherent  
 18 power to control its own docket and calendar"). "When and how to stay proceedings is within the  
 19 sound discretion of the trial court." *Cherokee Nation v. United States*, 124 F.3d 1413, 1416 (Fed. Cir.  
 20 1997).

21 This Court should exercise its broad discretion to stay these proceedings to allow plaintiffs an  
 22 opportunity to inspect CNET's books and records. Although plaintiffs are entitled to discovery  
 23 beyond the books and records available through an inspection demand,<sup>1</sup> plaintiffs believe that

25 <sup>1</sup> *See generally* Plaintiffs' Opposition to Nominal Defendant CNET Networks, Inc.'s Motion to  
 26 Stay Discovery (filed Nov. 9, 2006), plaintiffs' Notice of Motion and Motion to Compel;  
 27 Memorandum of Points and Authorities in Support thereof (filed Nov. 27, 2006), [Corrected]  
 Plaintiffs' Brief Re: Discovery and Leave to Amend (filed Apr. 18, 2007), and Plaintiffs' Motion for  
 Reconsideration (filed Apr. 25, 2007).

1 documents in CNET's files will reveal whether the delegation of options granting authority pursuant  
2 to the option plans was authorized or occurred. The Court has recognized that as among the points  
3 plaintiffs raised that "deserv[e] an opportunity for more complete development in a new pleading"  
4 April 30 Order at 1. Specifically, the April 30 Order cited the following issues as meriting more  
5 complete development:

6 [t]he alleged fact that Colligan and Robison were on the compensation committee  
7 when it approved the stock option grants dated April 17, 2000, and that at least one  
8 reading of the then-effective stock-option plan (the 1997) plan required **the committee** to determine the number of shares and options to be granted, the exercise  
9 price, the vesting and exercise period, leaving nothing to management other than  
mere execution, a ministerial act, or so it might be if more fully developed in a  
pleading.

10 *Id.* Because CNET's books and records should contain confirmation of those allegations, plaintiffs  
11 should be allowed to inspect them.

12 This Court has cautioned CNET that it expects prompt compliance with plaintiffs' inspection  
13 demand. April 30 Order at 3 ("Given that defendants themselves have raised this prospect [of a  
14 books-and-records inspection], the Court would expect prompt compliance."). Nevertheless,  
15 plaintiffs are not in a position to know how CNET will treat the demand. Assuming compliance,  
16 plaintiffs seek 35 days following receipt of all books and records subject to the demand in which to  
17 prepare and file an amended complaint. Should CNET refuse to comply with plaintiffs' demand,  
18 plaintiffs will seek judicial intervention in commanding compliance which will prolong the length of  
19 the requested stay for a period of time.

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1 **IV. CONCLUSION**

2 For all of the foregoing reasons, plaintiffs' motion to stay the litigation pending their  
3 inspection of CNET's books and records should be granted.

4 DATED: May 7, 2007

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

2 I hereby certify that on May 7, 2007, I electronically filed the foregoing with the Clerk of the  
3 Court using the CM/ECF system which will send notification of such filing to the e-mail addresses  
4 denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the  
5 foregoing document or paper via the United States Postal Service to the non-CM/ECF participants  
6 indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 7, 2007.

s/ KATHLEEN A. HERKENHOFF  
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